

**REMARKS****Objections to the Drawings**

Applicant respectfully traverses the objection to Figures 1 and 2. As set forth in the specification and claims, these figures, together with the remaining figures, the specification, and the claims, disclose features not disclosed or taught by the prior art. For example, Figures 1 and 2 illustrate a particular embodiment of a data network configured according to the present application. Applicant respectfully requests that the objection be withdrawn.

**Claim Objections**

With respect to the objection to claims 4, 9, and 15, these claims have been amended. Withdrawal of the objection is respectfully requested.

**Claims 5-6, 7-9 and 16-19 are allowable**

Claims 5-6, 7-9, and 15-16 were rejected under 35 U.S.C. § 112. These claims have been amended to further clarify the antecedent basis issues raised by the Office Action. Withdrawal of this rejection is respectfully requested.

**Double Patenting**

Claims 1-16 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 and 12-17 of copending Application No. 10/842,842. Although Applicant believes that the cited claims of the pending applications are patentably distinct, in the interest of moving the application forward, Applicant will submit a terminal disclaimer upon notice of allowability.

**Claims 1, 6-7, 10 and 11 are allowable**

Claims 1, 6-7, 10, and 11 were rejected under 103(a) as being unpatentable over US Patent No. 6,570,855 to Kung et al., ("Kung") in view of US Publ. 2004/0236547 to Rappaport et al., ("Rappaport"). Applicant respectfully traverses this rejection. Each of these claims recite elements not taught or disclosed by Kung or Rappaport.

With respect to claim 1, the claim recites "determining a capacity of a communications link connecting a digital subscriber line access multiplexer (DSLAM) and an asynchronous transfer mode (ATM) switch." This element is not taught or disclosed by Kung or Rappaport. The Office Action states that Kung discloses this element at col. 30, lines 49-65. Kung does not in fact disclose this element. Instead, the cited portion of Kung discloses a "Call Manager Gate Traffic Feature [that] proactively inquires of call manager module M0 to determine whether a load of the call manager exceeds a predetermined load level." Kung, col. 6, lines 49-52. The call manager module is a software module. Kung, col. 6, line 17-18. Thus, Kung discloses a system that determines whether the load on a call manager software program exceeds a threshold. Kung does not disclose determining a bandwidth capacity for a communications link connecting a digital subscriber line access multiplexer (DSLAM) and an asynchronous transfer mode (ATM) switch. Further, Rappaport also does not disclose the recited element. As set forth in the Office Action on page 6, Rappaport merely discloses a system that determines an average peak bandwidth per user. Accordingly, Kung and Rappaport fail to teach or disclose each and every element of claim 1.

Claim 1 also recites "determining a data transmission slowdown indicator that includes a slowdown amount and a probability of experiencing a slowdown event." Neither Kung nor Rappaport disclose or suggest this element. The Office Action asserts that Kung discloses this element at col. 6, lines 19-33. For ease of reference, the cited portion of Kung is set forth below in its entirety:

The IP central station 200 may be configured to provide connectivity for the broadband residential gateway 300 to the Internet 180 (e.g., World Wide Web (www)), as well as connectivity to other external networks such as public switched telephone network 160 and signaling system 7 (SS7) 170 for end-to-end voice, multimedia, and data applications, for example voice over IP telephony. IP packets traveling through the IP network provide for priority so that, for example, voice packets are given priority over data packets to maintain certain VoIP telephony QoS requirements and a leased line concept for packet traffic which may have an even higher priority. However, the system is sufficiently flexible so

that the priority can be dynamically altered according to customer preferences, variable billing rates, traffic patterns, and/or congestion.

As shown, the cited passage does not disclose or suggest determining a data transmission slowdown indicator that includes a probability of experiencing a slowdown event, as recited in claim 1. Kung nowhere discloses or suggest determining a probability of experiencing a slowdown event in a data network. Further, Rappaport also does not disclose the recited element. Accordingly, Kung and Rappaport individually and together fail to disclose or suggest each and every element of claim 1. Therefore, Applicant respectfully requests that the rejection of claim 1 be withdrawn. Further, claim 6 depends from claim 1. Accordingly, Kung and Rappaport fail to disclose each and every element of claim 6, at least by virtue of its dependence on claim 1. Therefore, Applicant respectfully requests that the rejection of claim 6 be withdrawn.

With respect to claim 7, the claim recites "determining a capacity of a communication link connecting a remote terminal (RT) to asynchronous transfer mode (ATM) switch via an optical concentrator device." As explained above, neither Kung nor Rappaport disclose or suggest determining the capacity of a communication link connecting a remote terminal (RT) to an asynchronous transfer mode (ATM) switch. Further, claim 7 recites "determining a data transmission slowdown indicator that includes a slowdown amount and a probability of experiencing a slowdown event." As explained above, neither Kung nor Rappaport disclose or suggest determining the probability of a slowdown event. Accordingly, Kung and Rappaport fail to disclose or suggest each and every element of claim 7. Applicant respectively submits that the rejection of claim 7 should be withdrawn.

With respect to claim 10, the claim recites a data communications system configured based on "a data communication capacity of the communication link, and a data transmission slowdown indicator." As explained above, neither Kung nor Rappaport disclose a data communications system that is configured based on a data communication capacity of a communication link, or based on a data transmission slowdown indicator. Accordingly, Kung and Rappaport fail to disclose or suggest each and every element of claim 10. Applicant respectively submits that the rejection of claim 10 should be withdrawn.

With respect to claim 11, the claim recites a data communications system configured based on "a data communication capacity of the communication link, and a data transmission slowdown indicator." As explained above, neither Kung nor Rappaport disclose a data communications system that is configured based on a data communication capacity of a communication link, or based on a data transmission slowdown indicator. Accordingly, Kung and Rappaport fail to disclose or suggest each and every element of claim 11. Applicant respectively submits that the rejection of claim 11 should be withdrawn.

Therefore, for at least the reasons set forth above, Kung and Rappaport fail to disclose each and every element of claims 1, 7, 10 and 11. Accordingly, Applicant respectfully requests that the rejection of these claims be withdrawn and the claims passed to allowance.

### CONCLUSION

Since all of the independent claims are allowable, all of the dependent claims are likewise allowable.

Applicants respectfully submit that the present application is in condition for allowance. Accordingly, the Examiner is requested to issue a Notice of Allowance for all pending claims. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney or agent.

The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account Number 50-2469.

6/27/05  
Date

Respectfully submitted,

  
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